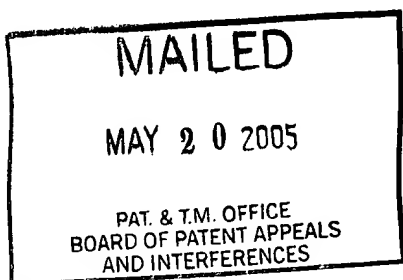




## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

Filed by: Sally Gardner Lane  
Telephone: (571) 272-9797  
Facsimile: (571) 273-0042



Applicants: Le et al.  
Application No.: 09/762,833  
Filed: 01/30/01  
For: Polymerization with living  
characteristics

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,314.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

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Sally Gardner Lane  
Administrative Patent Judge

## INTERFERENCE DIGEST

Interference No. 105,314

Paper No.

Name: Tam Phuong Le et al.

Serial No.: 09/762,833

Patent No.

Title: Polymerization with living characteristics

Filed: 01/30/01

Interference with Corpart et al.

### DECISION ON MOTIONS

Administrative Patent Judge, \_\_\_\_\_ Dated, \_\_\_\_\_

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### FINAL DECISION

Board of Patent Appeals and Interferences, \_\_\_\_\_ Dated, \_\_\_\_\_

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Court, \_\_\_\_\_ Dated, \_\_\_\_\_

### REMARKS

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This should be placed in each application or patent involved in interference in addition to the interference letters.

Filed by Sally Gardner Lane  
Administrative Patent Judge  
Mail Stop Interference  
P.O. Box 1450  
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Filed:  
20 May 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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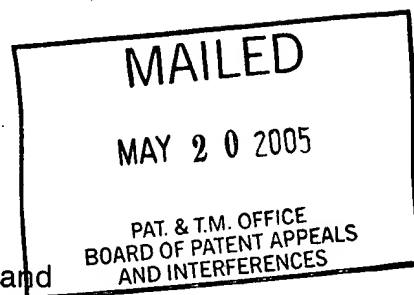
PASCALE CORPART,  
DOMINIQUE CHARMOT, SAMIR Z. ZARD,  
THIBAUD BIADATTI, and DANIEL MICHELET,

Junior Party  
(Patent 6,153,705)

v.

TAM PHUONG LE,  
GRAEME MOAD, EZIO RIZZARDO, and  
SAN HOA THANG

Senior Party,  
(Application 09/762,833).



Patent Interference No. 105,314

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**DECLARATION - Bd.R. 203(d)**

Before Sally Gardner Lane, Administrative Patent Judge.<sup>1</sup>

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<sup>1</sup>As part of Board efforts under the Government Paperwork Elimination Act, signatures on papers originating from the Board are being phased out in favor of a completely electronic record. Consequently, in this case papers originating at the Board will not have signatures. The signature requirements for the parties have not changed. See, e.g., 37 C.F.R. § 10.18.

### **Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the application(s), patent (if any), reissue application (if any), count(s) and claims designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of this DECLARATION.

### **Part B. Judge managing the interference**

Administrative Patent Judge Sally Gardner Lane has been designated to manage the interference. 37 CFR § 41.104(a) [Bd. R. 104(a)].

### **Part C. Standing order**

A Trial Section STANDING ORDER [SO] accompanies this DECLARATION. The STANDING ORDER applies to this interference.

### **Part D. Initial conference call**

A telephone conference call to discuss the interference is set for **2:00 pm on 6 July 2005** (the Board will initiate the call).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile (SO ¶ 4.5) a list of the motions (Bd. R. 120; Bd. R. 204; SO ¶ 26) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER.<sup>2</sup> Counsel are encouraged to discuss the schedule prior to

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<sup>2</sup> Interferences are generally conducted in two phases: (1) the "preliminary motions" phase and (2) the priority phase.

A principal goal of the preliminary motions phase is to establish the correct count, to establish the parties' constructive reduction to practice dates and to determine the subject matter at stake in the interference.

The count is important since it defines the scope of the proofs for proving priority. If a party is dissatisfied with the count, for example, because the party's best priority proofs are outside the count, a

the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a shorter or longer period.

A copy of default times for taking action during the preliminary motion phase of the interference accompanies the NOTICE DECLARING INTERFERENCE. Counsel should be prepared to justify altering the default times.

The Board is conducting an electronic filing and a DVD pilot project. Copies of the procedures are attached to this order. Counsel should be prepared to discuss participation in the electronic filing pilot project.

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motion to change the count may be authorized.

The accorded constructive reduction to practice dates ("the benefit dates") are important because they identify the junior party—who has the burden of proof on priority—and the date which the junior party must "beat." If a party feels that it is entitled to the benefit of the filing date of an earlier application or its opponent is not entitled to the filing date of an application for which benefit was accorded in the declaration, a motion to obtain or attack benefit may be authorized.

The claims designated as corresponding to the count are important because the subject matter of those claims will be lost to the "losing" party. If a party feels that some of its claims which have been identified as corresponding to the count are directed to an invention which is patentably distinct from the count, or that some of an opponent's claims which were designated as not corresponding to the count are patentably indistinct from the count, then a motion to undesignate or designate claims may be authorized.

Additional motions may be authorized during the preliminary motions phase. These include motions challenging the propriety of the interference or a party's standing to contest the interference (e.g., no interference-in-fact between the parties' respective claims, an interference against a patentee is barred by 35 U.S.C. § 135(b), a provoking party does not have written descriptive support for the claims added to institute the interference).

Other motions for unpatentability of involved claims, particularly those claims that will affect the count, may also be authorized. For example, where the count is "Claim 1 or Claim 2 of Jones Patent 5,XXX,XXX" and a party moves for a holding the Jones Claim 1 is unpatentable over prior art, the granting of the motion would necessarily affect the count and would most likely require that the count be modified sua sponte to eliminate the unpatentable subject matter.

## **Part E. Identification and order of the parties**

### Junior Party

Named inventors: Pascale Corpart  
Sannois, France

Dominique Charmot  
Le Pre Saint Gervais, France,

Samir Z. Zard  
Gif-Sur-Yvette, France

Thibaud Biadatti  
Opio, France

Daniel Michelet  
Nice, France

Application: 09/214,880, filed 14 January 1999,  
issued as 6,153,705 on 28 November 2000

Title: METHOD FOR BLOCK POLYMER SYNTHESIS BY  
CONTROLLED RADICAL POLYMERISATION

Assignee: RHODIA CHIMIE.

Accorded Benefit: PCT/FR98/01316, filed 23 June 1998  
FRANCE 97 07764, filed 23 June 1997

### Senior Party

Named Inventors: Tam Phuong Le  
Mill Park, Australia

Graeme Moad  
Kallista, Australia

Ezio Rizzardo  
Wheelers Hill, Australia

San Hoa Thang  
Clayton South, Australia

Application: 09/762,833, filed 30 January 2001

Title: POLYMERIZATION WITH LIVING  
CHARACTERISTICS

Assignee: E. I. DUPONT DE NEMOURS AND COMPANY

Accorded Benefit: PCT/US97/12540, filed 3 July 1997  
Australia PO 0933, filed 10 July 1996

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1). The senior party is responsible for initiating settlement discussions. SO ¶ 18.

## **Part F. Count and claims of the parties**

i. Count 1:

The subject matter which is common to (1) claim 1 of U.S. Patent 6,153,705 and (2) claim 11 of application 09/762,833.

ii. The claims of the parties are:

Corpart: 1-30

Le: 11-39

iii. The claims of the parties which correspond to Count 1, and therefore are involved in the interference, are:

Corpart: 1-12, 18-27 and 29

Le: 11-39

iv. The claims of the parties which do not correspond to Count 1, and therefore are not involved in the interference, are:

Corpart: 13-17, 28 and 30<sup>3</sup>

Le: None

## **Part G. Heading to be used on papers**

The heading in SO Form 1 must be used on all papers filed in this interference. See SO ¶ 7.2.1. The administrative patent judge and parties must be indicated as follows:

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<sup>3</sup> These claims do not correspond to the count because of the limitation b) in Corpart claim 13 (col. 42, lines 11-14).



UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Sally Gardner Lane)

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PASCALE CORPART,  
DOMINIQUE CHARMOT, SAMIR Z. ZARD,  
THIBAUD BIADATTI, and DANIEL MICHELET,

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(Patent 6,153,705)

v.

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SAN HOA THANG

Senior Party,  
(Application 09/762,833).

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Patent Interference No. 105,314

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**Part H. Order form for requesting file copies**

When requesting copies of files, use of SO Form 4 will greatly expedite processing of the request. Please attach a copy of Part E of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

## **Part I. Required paragraph for affidavits and declarations**

The Board has recently experienced a rash of cases in which a witness has belatedly advanced reasons why he or she would be unable to appear for cross examination at a reasonable time and place in the United States. Consequently, the Board is requiring the following paragraph to be included on the signature page of all affidavits (including declarations) filed in this case to prevent surprise and hardship to the party relying on the testimony of the witness:

In signing this affidavit/declaration, I recognize that the affidavit/declaration will be filed as evidence in a contested case before the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office. I also recognize that I may be subject to cross examination in the case and that cross examination will take place within the United States. If cross examination is required of me, I will appear for cross examination within the United States during the time allotted for cross examination.

Enc:

- Copy of STANDING ORDER
- Form PTO-850
- Copy of claims of Patent 6,153,705
- Copy of claims of Application 09/762,833
- Copy of default time for taking action
- Copy of procedures regarding electronic filing
- Copy of procedures regarding DVD pilot project

Revised January 2005

cc (via overnight delivery):

Attorney for Corpart:

Andrew M. Solomon  
RHODIA INC.  
259 Prospect Plains Road  
CN 7500  
Cranbury, NJ 08512-7500

Attorney for Le:

E I du Pont de Nemours & Company  
Legal Patents  
Wilmington, DE 19898

**Preliminary Motions--Default times for taking action**

Enter Declaration date		01/25/04				
		Calculate Date	Enter Weeks	Calculate Days		Description
Declaration		05/20/05	0	0		
Real party		02/08/04	2	14		
Request for file		02/08/04	2	14		
Clean copy claims		02/08/04	2	14		
Means analysis		02/22/04	4	28		
Drawing analysis		02/22/04	4	28		
P/M list		07/04/05				
Conference Call		07/06/05	8	56		
Time Period	1	08/17/05	6	42		Preliminary motions due
Object evidence		08/24/05		7	1	
Correct evidence		09/07/05		14	2	
Time Period	2	09/07/05	3	21		I & j preliminary motions
Object evidence		09/14/05		7	1	
Correct evidence		09/28/05		14	2	
Cross can begin		09/28/05		21	3	
Cross must end		10/09/05				
Time Period	3	10/19/05	6	42		Oppositions due
Object evidence		10/26/05		7	1	
Correct evidence		11/09/05		14	2	
Cross can begin		11/09/05		21	3	
Cross must end		11/20/05				
Time Period	4	11/30/05	6	42		Replies due
Object evidence		12/07/05		7	1	
Correct evidence		12/21/05		14	2	
Cross can begin		12/21/05		21	3	
Cross must end		01/01/06				
Time Period	5	01/11/06	6	42		Request for hearing, motion to suppress and & x-exam observations
Time Period	6	02/01/06	3	21		Suppression opposition & response to observations
Time Period	7	02/15/06	2	14		Suppression reply
Time Period	8	02/22/06	1	7		File record
Oral argument	9	03/22/06	4	28		Oral argument
P/m decision	10	04/26/06	5	35		Decision on p/m
Total Weeks from conference call to Time Period 8			33			
Total weeks from declaration to Time Period 8			41			
Total weeks from declaration to decision on p/m			50			